



DECISION MEMORANDUM

Fivemile Creek AOP

USDA Forest Service, Northern Region
Nez Perce – Clearwater National Forest
Red River Ranger District
Idaho County, Idaho



I. Background

After having reviewed relevant data, analyses, and public comments relating to this proposal, I have decided to approve the removal of an existing corrugated steel culvert on Fivemile Creek and replacing it with a 12-foot span, structural-plate, open bottom arch culvert on a concrete footing. The culvert is located on County Road 233 at Mile Post ~10.5. Legal coordinates for the project are T28N, R7E, Section 36 SW ¼ (Boise Meridian).

(See enclosed map.)

Purpose and Need

The current 48-inch CMP culvert is undersized and an aquatic organism barrier. The need for the proposed action is to provide the appropriate sized culvert for the 100-year storm and the proper channel improvements to prevent erosion. The need is also to allow for aquatic organism passage, including fish, at the site.

Providing an appropriately sized structure will minimize risk failure by reducing the risk of restricting the channel with plugging by woody material moving downstream. Minimizing failure risk reduces the risk of unwanted sediment input into streams which can negatively affect aquatic habitats. Long term maintenance costs will also be reduced because debris is not likely to accumulate on the larger structure.

Project Design/Environmental Mitigation

The Red River Ranger District of the Nez Perce – Clearwater National Forest, in partnership with the Nez Perce Tribe, will replace the existing culvert. The Nez Perce Tribe will be contacted for coordination, and the project will be funded by the Tribe.

The work includes but is not limited to clearing and grubbing, erosion control measures, structure excavation, roadway embankment, removing and disposing of existing culvert, compaction of backfill material, placing aggregate roadway surfacing, furnishing and installing precast concrete foundations, and furnishing and erecting a structural arch culvert.

Approximately 360 feet of County Road 233 will need to be built up with embankment material and covered with a layer of aggregate to improve roadside drainage and mitigate sediment runoff.

Equipment to be used includes an excavator, grader, dump trucks, and compaction roller. The project does not change access restrictions and County Road 233 will have a detour to allow for vehicular bypass.

All Best Management Practices (hereinafter referred to as "BMPs") that protect or minimize effects to water quality will be implemented, including dewatering of the work site, upstream, downstream, and worksite erosion control measures.

All equipment will be cleaned of debris before moving into the site to reduce the spread of weed infestation.

The project will take place in the spring/summer of 2014 and should last a maximum of two weeks.

II. Rationale for Decision and Reasons for Categorically Excluding the Decision

A. Category of Exclusion and Rationale for Using the Category

Based on information in this document and the project record, I have determined this project is not significant in either context or intensity (40 CFR 1508.27), that no extraordinary circumstances affecting resource conditions exist (36 CFR 220.6), that this project may be categorically excluded from documentation in an EA or EIS, and that it meets all the criteria outlined in 36 CFR 220.6(e)(7): *Aquatic habitat structure repair*.

The rationale for my decision is based on: 1) the proposed action fully meeting the criteria for Categorical Exclusions, 2) the proposed action meeting the purpose and need, 3) the findings related to extraordinary circumstances, discussed below, 4) the project's consistency with laws and regulations, 5) the on-the-ground review and discussion with District resource specialists, and 6) my review of the Biological Assessments (BA), Biological Evaluations (BE), and specialists' reports.

B. Finding of the Absence of Extraordinary Circumstances to Resource Conditions

1. Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat or Forest Service sensitive species:

The Interdisciplinary Team (ID Team) Botanist, Wildlife and Fish biologists determined the proposed actions will have no effect or impact on listed or sensitive plant, wildlife or fish species or habitat, and suitable habitat will not be altered, with the following exceptions:

Forest Botanist: *The only species of concern likely to have suitable habitat in the project area would be Astragalus paysonii and Waldsteinia idahoensis. Both occur in the general area and may be found on roadsides or other transitional habitats such as*

those at the work site. The proposed activities could impact any plants that may be present, but both species are well documented to tolerate or in the case of the *Astragalus*, even require disturbance to persist. Thus the project may impact plants or habitat, but would also be beneficial by maintain or reestablishing suitable or desired habitat.

Fisheries Biologist: Bull trout designated critical habitat (DCH) is just 0.2 miles downstream of proposed activities in Crooked River, occupied habitat is assumed in lower Fivemile Creek. Steelhead DCH is within the direct project area.... The project is designed to comply with all Terms and Conditions and Design Criteria in the Stream Crossing Programmatic (USFWS 01EIFW00-20120F-0015, NMFS No. 2011/05875).

WCT (Westslope cutthroat trout) can be found throughout Crooked River and are assumed present in lower Fivemile Creek. Pacific Lamprey have not been observed in the direct project area but habitat is assumed present 0.2 miles downstream of the project area in Crooked River. Chinook rearing habitat is assumed present in lower Fivemile Creek. Spawning, rearing and migration habitat is located below the project area in Crooked River. Interior redband trout are assumed present within the project area in Fivemile Creek and have been observed in Crooked River. Western pearshell have not been observed in Fivemile Cr. but are found throughout Crooked River.

The existing culvert is undersized and a partial fish barrier. The improved Fivemile AOP project will open an additional 3.5 miles of spawning and rearing habitat. The work includes but is not limited to clearing and grubbing, erosion control measures, structure excavation, roadway embankment, removing and disposing of existing culvert, compaction of backfill material, placing aggregate roadway surfacing, furnishing and installing precast concrete foundations and furnishing and erecting a structural arch culvert. Construction will be completed during the in-stream work window (July-Aug 2014).

Wildlife Biologist: There are no expected impacts to black-backed woodpecker habitat. Disturbance resulting from culvert replacement activities may temporarily displace local individuals but overall effects would be minor and of short duration. No changes to the population or viability would be expected.

There are no expected impacts to fisher habitat. Disturbance resulting from culvert replacement activities may temporarily displace local individuals but overall effects would be minor and of short duration. No changes to the population or viability would be expected.

There are no expected impacts to gray wolf habitat. Disturbance resulting from culvert replacement activities may temporarily displace local individuals but overall effects would be minor and of short duration. No changes to the population or viability would be expected.

Western toads can be found in a wide range of habitats from meadows to forests but they are commonly associated with wet areas. Individual toads may be impacted by culvert replacement activities during the short time the project activities are taking place. This will not result in loss of population viability. Any adverse effects are not expected to have any long-term impacts on the population as a more natural functioning stream

channel will allow for easier and safer travel of toads up and down the stream and improve habitat conditions. There will not be any loss of toad habitat from this project.

2. Floodplains, wetlands, or municipal watersheds:

The District Hydrologist confirmed the project area is not located in, and will not affect any municipal watersheds, and he made the following comments:

Floodplains: The Project will not modify or occupy floodplains to an extent greater than already exists. As such, there will be no adverse impacts to floodplains; thereby complying with EO 11988 and FSH 1909.15, Chapter 30.3.2. Wetlands: The Project does not propose to modify or destroy wetlands. As such, the Project will not adversely affect wetlands; thereby complying with EO 11990 and FSH 1909.15, Chapter 30.3.2. Municipal Watersheds: The Project area is not located within a municipal watershed. As such, the Project will not adversely affect municipal watersheds; thereby complying with FSH 1909.15, Chapter 30.3.2.

The Forest Plan objective for Water Quality is: "The current Idaho Water Quality Standards will be met or exceeded. This will be accomplished through ... application of best-management practices". The proposed project is consistent with the standards, goals, and objectives for water resources set forth in the Nez Perce National Forest Plan (USDA, 1987a) and the Clearwater National Forest Plan (USDA, 1987b) because project Design Criteria and BMPs have been included to protect water resources. BMPs include Soil and Water Conservation Practices (FSH 2509.22) used to control non-point source pollution and protect water resources from permanent damage.

This project will replace one undersized culverts on a perennial stream with a bottomless arch. The project will not affect stream temperatures; no trees/canopy will be removed. Soil disturbance will be limited to the construction area which is already heavily disturbed; erosion control BMPs will be in place during construction; water will be diverted around the construction zone during construction; and, the channel will be slowly re-watered to reduce turbidity downstream. Replacement of the CMP with a larger sized (minimum passage of 100-yr flood) hydraulic crossing and stabilizing the road will be a net benefit to aquatic resources and stream channel processes by allowing freer passage of flow.

3. Congressionally designated areas, such as wilderness, wilderness study areas or national recreation areas:

The project is not located in a wilderness, wilderness study area or a national recreation area.

4. Inventoried Roadless areas or potential wilderness areas:

The project is not located in a potential wilderness area; therefore, the proposed action will have no effect on Roadless characteristics as identified in 36 CFR 294.

5. Research Natural Areas:

The proposed activities are not within or adjacent to any Research Natural Areas.

6. American Indians and Alaska native religious or cultural sites and

7. Archaeological sites or historical properties or areas: A “no inventory decision” has been made for this project. A cultural resources records search has been conducted and no cultural resource sites have been identified within the area of potential effects. Because of the previous adequate inventory or the type location or nature of the undertaking, the Forest Cultural Resource Specialist has determined the above project has little likelihood to adversely affect historic properties.

8. Soils: The Soil Scientist states: *Soil and Water BMPs will be used for any ground disturbing activities. Soil and Water BMPs can be found in the National Best Management Practices for Water Quality Management on National Forest System Lands (USDA FS Publication FS990a); and, that [t]he project does not occur on landslide prone lands.*

III. Interested and Affected Agencies, Organizations, and Persons Contacted

On September 30, 2013, letters providing information and seeking public comment were mailed to individuals, organizations, a variety of state and local agencies, and the Nez Perce and Coeur d’Alene tribes. Additionally, a legal notice appeared in the *Lewiston Tribune* on October 28, 2013, inviting comments for 30 days from publication. Three letters were received addressing this project during the public comment period but only one had a specific concern and is addressed in Appendix A. Project information has also been made available at <http://www.fs.usda.gov/nezperceclearwater> under NEPA projects.

IV. Findings Required by other Laws:

Based on my review of the actions associated with this project, I find that the Fivemile Creek AOP Project is consistent with applicable Federal laws and regulations, including the standards and guidelines contained in the 1987 Nez Perce National Forest Plan, as amended, as required by the National Forest Management Act of 1976. My decision also complies with all Federal, state or local laws or requirements for the protection of the environment and cultural resources, as follows:

National Forest Management Act and Nez Perce National Forest Plan: This action is consistent with the standards and guidelines contained in the 1987 Nez Perce National Forest Plan, as amended, as required by the National Forest Management Act of 1976. The National Forest Management Act (NFMA) and accompanying regulations require that several specific findings be documented at the project level. All proposals that involve vegetation manipulation of tree cover for any purpose must comply with the requirements found in 36 CFR 219.28. The proposed action complies with 36 CFR 219.28(c) by contributing to the achievement of desired conditions and ecological sustainability, and is necessary to protect multiple-use values other than timber production.

Forest Plan Amendment 20 - PACFISH Riparian Habitat Conservation Areas (RHCAs): All activities associated with the proposed action comply with direction regarding PACFISH (refer to the project record).

Endangered Species Act: A Forest Service Fish Biologist, Wildlife Biologist, and Botanist evaluated the proposed action with regard to the Endangered Species Act as documented in the Biological Assessments, Biological Evaluations, and specialist’s reports, and determined this project is consistent with the Endangered Species Act.

Clean Water Act and State Water Quality Laws: The ID Team Hydrologist has determined that this project complies with the Clean Water Act and state water quality laws, and will protect beneficial uses.

Clean Air Act: This project will comply with the provisions of the Clean Air Act. Any prescribed burning associated with this project will comply with state and Federal air quality regulations. Compliance with procedures outlined in the North Idaho Smoke Management Memorandum of Agreement would result in no long term impacts to air quality. These measures protect air quality and comply with the rules, regulations, and permit procedures of the EPA and the IDEQ.

Migratory Bird Treaty Act: The proposed action will comply with the Migratory Bird Treaty Act. There will not be a measurable impact on neotropical migratory bird populations as a whole.

The project complies with the U.S. Fish and Wildlife Service Director's Order #131 related to the applicability of the Migratory Bird Treaty Act to Federal agencies and requirements for permits for "take." In addition, this project complies with Executive Order 13186 because the analysis meets agency obligations as defined under the January 16, 2001 Memorandum of Understanding between the Forest Service and U.S. Fish and Wildlife Service designed to complement Executive Order 13186.

National Historic Preservation Act: This project meets the agency's responsibilities under the National Historic Preservation Act and is consistent with the *Programmatic Agreement between the Idaho State Historic Preservation Officer, the Advisory Council on Historic Preservation and the Region 1 National Forests in Northern Idaho Regarding the Management of Cultural Resources*.

American Indian Treaty Rights: The Nez Perce Tribal Government Liaison reviewed the project, and determined the proposed action will not affect Nez Perce Tribe Treaty rights or Nez Perce Tribal members' abilities to exercise those rights.

Environmental Justice: I assessed the proposed action and determined it will not disproportionately impact consumers, Native American Indians, women, low-income populations, other minorities or the civil rights of any American Citizen, in accordance with Executive Order 12898. No disproportionate impacts to minority or low-income populations were identified during scoping or the effects analysis.

Prime Farm Land, Range Land, and Forest Land: The proposed action complies with the Federal Regulations for prime land. The definition of "prime" forest land does not apply to lands within the National Forest System. The project area does not contain any prime range land or farm land. Federal lands will be managed with appropriate sensitivity to the effects on adjacent lands.

Energy Requirements: There are no unusual energy requirements for implementing the proposed action.

Other Laws or Requirements: The proposed action is consistent with all other Federal, State or local laws or requirements for the protection of the environment and cultural resources.

V. Review and Appeal Opportunities, and Implementation Date

This decision is subject to appeal pursuant to 36 CFR 215, as clarified in the court order dated October 19, 2005, by the U.S. District Court for the Eastern District of California in Case No. CIV F-03-6386JKS. A written appeal must be submitted within 45 days following the publication date of the legal notice of this decision in the *Lewiston Tribune*, Lewiston, Idaho. It is the responsibility of the appellant to ensure their appeal is received in a timely manner. The publication date of the legal notice of the decision in the newspaper of record is the exclusive means for calculating the time to file an appeal. Appellants should not rely on date or timeframe information provided by any other source.

Paper appeals must be submitted to:

USDA Forest Service, Northern Region OR
ATTN: Appeal Deciding Officer
P.O. Box 7669
Missoula, MT 59807

USDA Forest Service, Northern
Region
ATTN: Appeal Deciding Officer
200 East Broadway
Missoula, MT 59802

Office hours: M-F, 7:30 a.m. to 4:00 p.m., (MST) excluding holidays.

Facsimile transmitted appeals must be submitted to: (406) 329-3411

Electronic appeals must be submitted to: appeals-northern-regional-office@fs.fed.us

If an electronic appeal is submitted, the subject line should contain the name of the project being appealed. An automated response will confirm your electronic appeal has been received. Electronic appeals must be submitted in MS Word, Word Perfect, or Rich Text Format (RTF).

It is the appellant's responsibility to provide sufficient project or activity specific evidence and rationale, focusing on the decision, to show why my decision should be reversed. The appeal must be filed with the Appeal Deciding Officer in writing. At a minimum, the appeal must meet the content requirements of 36 CFR 215.14, and include the following information:

- The appellant's name and address, with a telephone number, if available;
- A signature, or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the appeal);
- When multiple names are listed on an appeal, identification of the lead appellant and verification of the identity of the lead appellant upon request;
- The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision;
- The regulation under which the appeal is being filed, when there is an option to appeal under either 36 CFR 215 or 36 CFR 251(c);
- Any specific change(s) in the decision that the appellant seeks and rationale for those changes;
- Any portion(s) of the decision with which the appellant disagrees, and explanation for the disagreement;

- Why the appellant believes the Responsible Official's decision failed to consider the substantive comments; and
- How the appellant believes the decision specifically violates law, regulation, or policy.

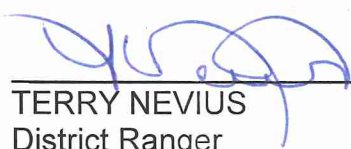
If an appeal is received on this project there may be informal resolution meetings and/or conference calls between the Responsible Official and the appellant. These discussions would take place within 15 days after the closing date for filing an appeal. All such meetings are open to the public. If you are interested in attending any informal resolution discussions, please contact the Responsible Official or monitor the following website for postings about current appeals in the Northern Region of the Forest Service: http://www.fs.fed.us/r1/projects/appeal_index.shtml.

If no appeals are filed within the 45-day time period, implementation of the decision may occur on, but not before, five business days from the close of the appeal filing period. When appeals are filed, implementation may occur on but not before the 15th business day following the date of the last appeal disposition.

VI. Contact Person

Questions regarding this decision should be sent to Linda S. Helm, Small NEPA Team Coordinator, c/o Nez Perce Supervisor's Office, 104 Airport Road, Grangeville, Idaho 83530 or by telephone to (208) 935-4285 or facsimile transmittal at (208) 983-4042 during business hours (M-F, excluding Federal holidays, 7:30 a.m. to 4:30 p.m., PST).

VII. Signature of Deciding Officer



TERRY NEVIUS
District Ranger
Red River Ranger District

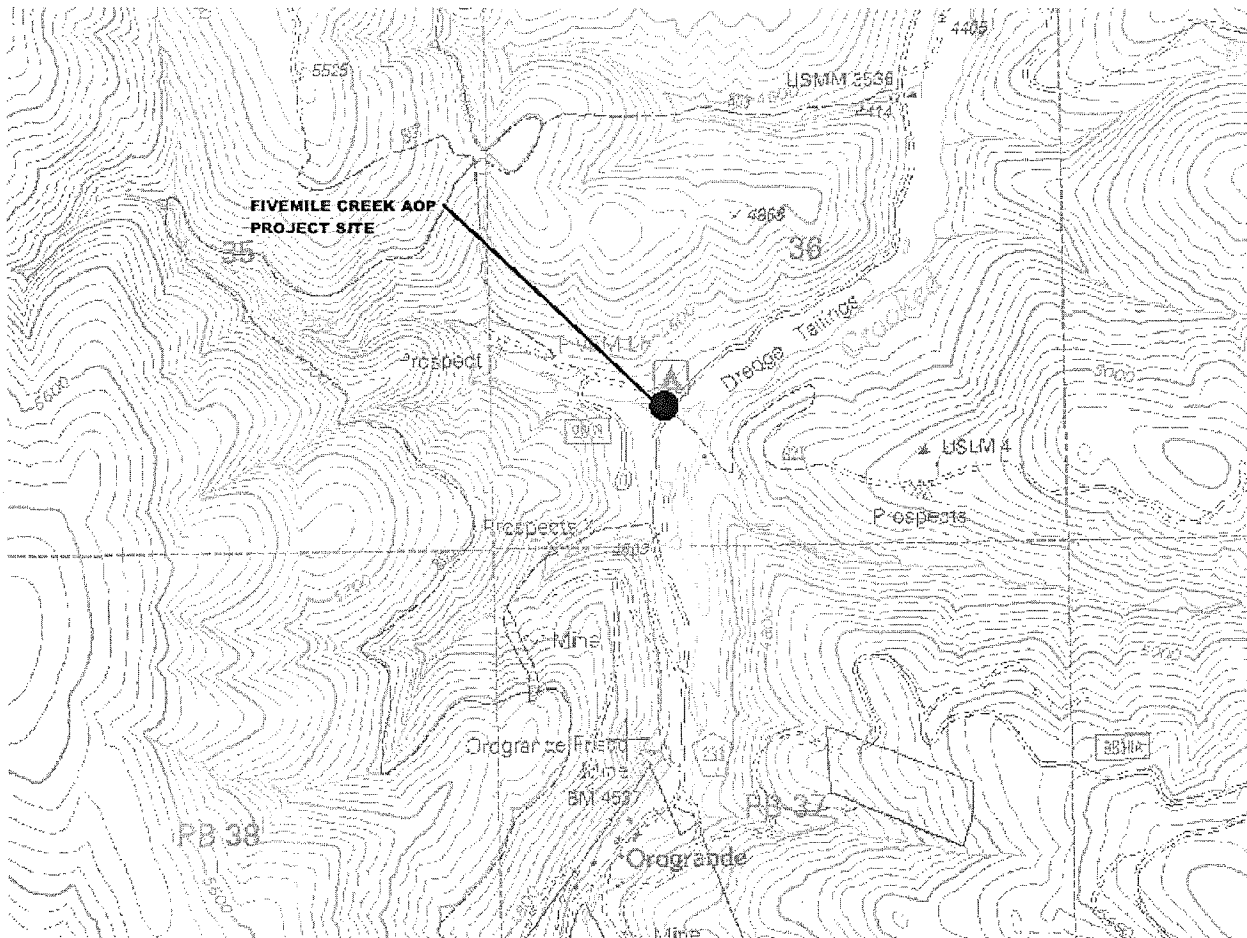


Date

cc: Christopher Wolffing

Enclosure: Map of project site

Map of Fivemile Creek AOP Project Site



Appendix A

Response to Public Comments

On September 30, 2013, letters providing information and seeking public comment were mailed to individuals, organizations, a variety of state and local agencies, and the Nez Perce and Coeur d'Alene tribes. Additionally, a legal notice appeared in the *Lewiston Tribune* on October 28, 2013, inviting comments for 30 days from publication. Three letters were received specifically addressing this project during the public comment period but only one of these letters had a specific concern about it. This letter and our response are incorporated below.

| Planning Participant | Comment | Response |
|---|---|--|
| <p>Gary Macfarlane Friends of the Clearwater P.O. Box 9241 Moscow, ID 8343 --and-- Board Member Alliance for the Wild Rockies</p> | <p>As with the other culvert projects, [it] would [be] useful for the Forest Service to let the public know how it has prioritized projects such as this one. It may be that certain roads should be decommissioned rather than replacing culverts. In fact, the Forest Service did propose that the Crooked River Road be closed and access relocated in the fairly recent past. How does this fit in with that earlier proposal? The national forest road system is far too large and there is not enough money to maintain it at its current size. The larger roads analyses need to go through NEPA and public involvement in the very near future.</p> | <p>The Fivemile Creek AOP Culvert Replacement project was prioritized based on the need to have a crossing at the Fivemile Creek/Road 233 that can handle the 100 year storm flows and to allow for fish passage opening up an additional 3.5 miles of spawning and rearing habitat. This project is not part of the Crooked River project further downstream and decommissioning roads is not part of this culvert replacement project. Roads have been decommissioned within the Crooked River Watershed Recently.</p> |